

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF  
WASHINGTON

MARK A. ARTHUR, CIRILO MARTINEZ,  
HEATHER MCCUE and PARI NAJAFI on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

SALLIE MAE, INC.,

Defendant.

JUDITH HARPER,

Plaintiff/Intervenor,

v.

ARROW FINANCIAL SERVICES, LLC,

Defendant.

NO. C10-0198 JLR

**PLAINTIFFS' MOTION FOR FINAL  
APPROVAL OF AMENDED  
SETTLEMENT**

**Noted for Consideration:  
Friday, September 14, 2012, 1:30 p.m.**

**ORAL ARGUMENT**

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## I. INTRODUCTION

Mark A. Arthur, Cirilo Martinez, Pari Najafi, and Heather McCue (“Plaintiffs”) respectfully submit this memorandum in support of their motion for final approval of the Amended Settlement. For the reasons set forth in this memorandum and in the papers previously submitted in support of approval, the Amended Settlement is fair, adequate and reasonable and in the best interests of the Class. Accordingly, Plaintiffs respectfully request that the Court grant final approval to the Amended Settlement by: (1) approving the proposed Amended Settlement Agreement as fair, adequate, and reasonable for the certified Settlement Class; and (2) determining that adequate notice was provided to the Settlement Class.

## II. AUTHORITY AND ARGUMENT

When faced with a motion for final approval of a class action settlement under Rule 23, a court’s inquiry is whether the settlement is “fair, adequate, and reasonable.” *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003). A settlement is fair, adequate, and reasonable, and merits final approval, when “the interests of the class as a whole are better served by the settlement than by further litigation.” *Manual for Complex Litigation* (Fourth) (“MCL 4th”) § 21.61, at 480 (2010). The Court’s role is to ensure that “the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (internal quotes and citations omitted).

### A. The Settlement Is the Result of Informed, Arm’s-Length Negotiations

To reach this Amended Settlement, Plaintiffs and Sallie Mae engaged in extensive negotiations, including multiple in-person mediations before experienced former federal magistrate judge, the Honorable Edward A. Infante. Those discussions culminated in an Amended Settlement Agreement that provides substantial benefits to the Settlement Class, including 1) core equitable relief that requires Sallie Mae to stop calling Plaintiffs and Class Members on their cellular telephones if the Class Members so request, and 2) payment by

1 Sallie Mae of \$24.15 million into a settlement fund, the largest TCPA settlement of which  
2 Class Counsel are aware.

3 The Amended Settlement is also the result of a thorough investigation by the parties.  
4 Before filing the *Arthur* action in February 2010, *Arthur* Counsel spent months investigating  
5 and researching the relevant legal issues as well as the factual allegations made by consumers.  
6 Dkt. No. 52 (Selbin Decl.) ¶¶ 8–15.<sup>1</sup> Similarly, counsel for Plaintiff *Najafi* thoroughly  
7 investigated the potential claims of the co-signor plaintiffs before filing their Complaint. Dkt.  
8 No. 55 ¶ 6; Dkt. No. 56 ¶ 5; Dkt. No. 57 ¶ 5. After filing the complaint, *Arthur* Counsel  
9 continued to exchange legal arguments with Sallie Mae and conducted extensive informal and  
10 confirmatory discovery from Sallie Mae, and requested and received documents. Dkt. No. 52  
11 ¶¶ 23–25, 37–38. *Arthur* Counsel also engaged in ongoing consultations with prospective class  
12 members, which proved helpful in permitting counsel to assess the strengths and weaknesses of  
13 the case. *Id.* ¶ 13. Plaintiffs were able to reach the original Settlement with Sallie Mae only  
14 after they received information from Sallie Mae regarding the size of the proposed Class. Dkt.  
15 No. 185 ¶¶ 3–10. Indeed, this information was crucial for Plaintiffs to evaluate class-wide  
16 damages. *See id.* When Sallie Mae informed Plaintiffs that the Class was substantially larger  
17 than Sallie Mae had originally believed, the parties re-opened settlement negotiations in order  
18 to address relief for the newly-disclosed Class Members. *See id.* ¶ 6. Following two Fed. R.  
19 Civ. P. 30(b)(6) depositions on issues relating to the newly-disclosed Class Members and  
20 additional written discovery, as well as further mediation sessions with Judge Infante, Plaintiffs  
21 secured an additional \$4.65 million dollars for the Class. *See id.* ¶¶ 10–11.

22 As the Court recognized in its preliminary approval order, and as Judge Infante attests,  
23 the Amended Settlement “resulted from extensive arm’s length negotiations.” Dkt. No. 216 ¶  
24 1; see also Dkt. No. 186 ¶¶ 3–4. Arm’s-length negotiations conducted by competent, informed  
25

26 <sup>1</sup> *Arthur* Counsel are defined in the Amended Settlement Agreement as counsel to Plaintiffs  
Mark Arthur, Cirilo Martinez, and Heather McCue. Amended Agreement at 1.

1 counsel are *prima-facie* evidence of a settlement that is fair and reasonable. *See Hughes v.*  
2 *Microsoft Corp.*, No. C98-1646C, C93-0178C, 2001 WL 34089697, at \*7 (W.D. Wash. Mar.  
3 26, 2001) (“A presumption of correctness is said to attach to a class settlement reached in arms-  
4 length negotiations between experienced capable counsel after meaningful discovery.”); *see*  
5 *also Pelletz v. Weyerhaeuser Co.*, 255 F.R.D. 537, 542–43 (W.D. Wash. 2009) (approving  
6 settlement “reached after good faith, arms-length negotiations”); *In re Phenylpropanolamine*  
7 *(PPA) Prods. Liability Litig.*, 227 F.R.D. 553, 567 (W.D. Wash. 2004) (approving settlement  
8 “entered into in good faith, following arms-length and non-collusive negotiations”).

9 Accordingly, the Amended Settlement is entitled to a presumption of fairness.

10 **B. Class Members Received the Best Notice Practicable**

11 This Court has already determined that the notice program in this case meets the  
12 requirements of due process and applicable law, provides the best notice practicable under the  
13 circumstances, and constitutes due and sufficient notice to all individuals entitled thereto. Dkt.  
14 No. 216 ¶ 9. This notice program has been fully implemented by independent claims  
15 administrator, The Garden City Group, Inc. (“GCG”). *See generally* Declaration of Jennifer M.  
16 Keough Regarding Notice Dissemination and Settlement Administration (“Keough Decl.”).

17 Sallie Mae provided GCG with a list containing the names of each Settlement Class  
18 Member (the “Class List”). Keough Decl. ¶ 5. The Class List included email addresses for  
19 Settlement Class Members who were to receive email notice, notations if the Settlement Class  
20 Members had opted out of receiving email notices from Sallie Mae, and the Settlement Class  
21 Members’ most recent mailing address if they were to receive mailed notice. *See id.*

22 After receiving the Class List, GCG contacted major Internet Service Providers (“ISPs”)  
23 to inform them that they would receive a high volume of emails during the distribution process  
24 and to request their assistance and cooperation. Keough Decl. ¶ 8. GCG reviewed the email to  
25 be sent to Settlement Class Members (“Email Notice”) to ensure that it did not contain content  
26 or parameters that would trigger SPAM filters and thus cause emails to be bounced back. *Id.*

¶ 10. GCG monitored failed emails carefully and attempted to resend emails as many as three times. *See id.* For those emails that could not be delivered (377, 987 in total), GCG attempted to match the emails with a mailing address and to deliver the notice by direct mail. *See id.*

In addition to Email Notice, GCG mailed one of four Postcard Notices to the most recent mailing address of those individuals for whom Sallie Mae did not have an email address on record and/or who had opted out of receiving emails from Sallie Mae. Keough Decl. ¶ 13. Before mailing the Postcard Notices, GCG updated the addresses through the National Change of Address database maintained by the United States Postal Service. *Id.* ¶ 14. Of the 7,880,040 records provided, an updated address was located for 1,168,623 Settlement Class Members. If GCG had not been provided a mailing address for a particular Settlement Class Member, GCG performed additional research, which was highly successful. *Id.* ¶ 14 (noting 54,661 addresses were found for 132,523 records through reverse phone look ups).

The content of the Class Notice was tailored to reflect the status of individual Settlement Class Members. Specifically tailored versions were sent to (1) Settlement Class Members who received notice of the original Settlement and filed a Claim Form; (2) Settlement Class Members who received notice of the original Settlement and filed a revocation request only; (3) Settlement Class Members who received notice of the original Settlement and filed an exclusion request; and (4) all other Settlement Class Members, including newly identified Settlement Class Members. Dkt. No. 187 ¶ 8. All four versions informed Settlement Class Members of: (1) the Amended Settlement's benefits, including the new benefits; (2) new extended deadlines for all Settlement Class Members to file a Claim Form and/or Revocation Request, opt out of the Amended Settlement, withdraw a past exclusion request, and object to the Amended Settlement or to Class Counsel's attorneys' fees and costs request; (3) the amount being sought by Class Counsel in attorneys' fees and costs; (4) the address for the Settlement Website where they can obtain more information, download forms, and file claims and/or revocation requests; and (5) the date and location of the final approval hearing. *Id.* ¶ 4, Ex. B.



1 In addition to email and mailed notice, GCG published the Publication Notice in *USA*  
2 *Today* on April 18, 2012, and in the Wall Street Journal on April 18 and 25, 2012. Keough  
3 Decl. at ¶ 17. As of May 6, 2012, approximately 107,120 persons have dialed the toll-free  
4 number operated by GCG, including 31,441 calls since commencement of the notice program  
5 for the Amended Settlement, and approximately 166,856 persons have visited the website,  
6 including 88,606 since the Amended Settlement's notice program commenced. *Id.* at ¶¶ 17–19.

7 In addition, *Arthur* Counsel has received and responded to well over 4,000 telephone  
8 calls from Class members. Declaration of Jonathan D. Selbin in Support of Motion for Final  
9 Approval of Amended Settlement and Motion for Award of Attorneys' Fees and Costs and  
10 Service Awards ("Selbin Decl.") ¶ 53. *Arthur* Counsel answered all questions regarding the  
11 Amended Settlement and assisted many Class Members in completing the revocation and claim  
12 forms. *Id.* *Arthur* Counsel has observed in those communications that Class members  
13 generally have positive views about the terms of the Amended Settlement and have been  
14 pleased to have the ability to make the automated calls to their cellular phones stop. *See id.*<sup>2</sup>

15 In sum, the notice program approved by this Court and implemented by GCG has  
16 provided due and adequate notice of these proceedings and of the matters set forth therein,  
17 including the Amended Agreement, to all parties entitled to such notice and satisfied the  
18 requirements of Federal Rule of Civil Procedure 23, the requirements of constitutional due  
19 process, and the requirements set forth in *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d  
20 988, 994 (9th Cir. 2010). As of May 15, 2012, nearly 98 percent of the 7,792,256 Settlement  
21 Class Members have successfully been provided with notice of the Amended Settlement by  
22 email or mail. Keough Decl. ¶ 16. Due process is satisfied.

23  
24  
25  
26 <sup>2</sup> Moreover, since most Class Members also received mail, email, and/or publication notice in  
2010 of the original Settlement (which in many key respects was identical to the Amended  
Settlement), most Class Members effectively received the best practicable notice *twice*.

1 **C. The Amended Settlement Satisfies the Criteria for Final Approval**

2 In deciding whether to grant final approval to a class action settlement, courts consider  
3 several factors, including:

4 [1] the strength of the Plaintiffs' case; [2] the risk, complexity, and  
5 duration of further litigation; [3] the risk of maintaining class action  
6 status throughout the trial; [4] the amount offered in settlement; [5] the  
7 extent of discovery and the stage of the proceedings; [6] the experience  
8 and views of counsel; [7] the presence of a government participant; and  
9 [8] the reaction of the class members to the proposed settlement.

10 *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011). Applied to  
11 this case, the relevant criteria support final approval of the Amended Settlement.

12 1. The Strength of Plaintiffs' Case

13 Although Plaintiffs have thoroughly investigated the factual and legal bases for their  
14 claims and have developed substantial evidence supporting their allegation that Sallie Mae  
15 violated the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*, one  
16 cannot ignore the presence of significant risks in continuing the litigation had settlement not  
17 occurred. This case turns on competing interpretations of, among other things, the FCC's  
18 January 4, 2008 declaratory ruling, *In the Matter of Rules and Regulations Implementing the*  
19 *Telephone Consumer Protection Act of 1991*, 23 F.C.C.R. 559, 23 FCC Rcd. 559, 43  
20 Communications Reg. (P&F) 877, 2008 WL 65485 (F.C.C.) (hereinafter "Declaratory  
21 Ruling"). The Declaratory Ruling is the FCC's official interpretation of the governing  
22 provisions of the TCPA. The FCC's Declaratory Ruling addresses the meaning of "prior  
23 express consent" and states: "prior express consent is deemed to be granted only if the wireless  
24 number was provided by the consumer to the creditor, and that such number was provided  
25 during the transaction that resulted in the debt owed." *Id.* ¶ 10. Plaintiffs maintain that  
26 Paragraph 10 requires that the cell phone number be "provided during the transaction that  
resulted in the debt owed," *i.e.* during loan "origination."

Sallie Mae, on the other hand, has interpreted the term "transaction" broadly to mean  
any time during the multi-year life of the loan. Sallie Mae has therefore steadfastly maintained

1 that some or all of the Class Members gave Sallie Mae prior express consent to contact them at  
2 their cellular phone numbers. Dkt. No. 208 at 4 (citing *Moore v. Firstsource Advantage, LLC*,  
3 No. 07-CV-770, 2011 WL 4345703, at \*10 (W.D.N.Y. Sept. 15, 2011)). If the Court found  
4 that the FCC's Declaratory Ruling and/or the TCPA permits "prior express consent" to be  
5 given: (1) after loan origination on documents such as correspondence, updated information  
6 forms, forbearance requests, and the like, and/or (2) verbally, Sallie Mae could have effectively  
7 reduced the recoverable damages or eliminated them altogether. In addition, even if Plaintiffs  
8 prevailed on their interpretation of the FCC's Declaratory Ruling, this is an issue of first  
9 impression in this Circuit that, given the amount at stake, would be appealed to the Ninth  
10 Circuit and perhaps the Supreme Court.

11 The risks of continued litigation have only increased since this Court granted  
12 preliminary approval of the original Settlement. Since that time, the Supreme Court decided  
13 *AT&T Mobility LLC v. Concepcion*, -- U.S. --, 131 S. Ct. 1740 (2011), holding that class action  
14 waivers in many consumer arbitration agreements can be enforced. Without the Amended  
15 Settlement, Sallie Mae would argue that many Class Members' claims must be sent to  
16 individual arbitrations. The Supreme Court also has decided *Wal-Mart Stores, Inc. v. Dukes*, --  
17 - U.S. ---, 131 S. Ct. 2541 (2011), which potentially implicates certification of large,  
18 nationwide classes.

19 Under the Amended Settlement, Settlement Class Members avoid all of those risks and  
20 obstacles to recovery and receive substantial benefits, and in timely fashion. All Settlement  
21 Class Members receive the unambiguous right to end the telephone calls at the heart of this  
22 litigation. In addition, all but the charged-off Class Members can recover money damages,  
23 through a straightforward claim process that only requires completing a simple one-page form.

24 2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

25 Another factor in assessing the fairness of the proposed Amended Settlement is the  
26 complexity, expense, and likely duration of this lawsuit had settlement not been achieved.  
*Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). Throughout the

1 negotiation process, Sallie Mae vigorously defended its position and expressed every intention  
2 of continuing a spirited defense, absent a settlement, through trial and appeal. Class Counsel  
3 have a significant amount of experience in consumer class action litigation and know from their  
4 own experience that any case involving a nationwide class of consumers can, and often does,  
5 lead to costly litigation that goes on for years.

6 Moreover, there is a substantial risk of losing inherent in any jury trial. Even if  
7 Plaintiffs prevailed at trial, Sallie Mae would almost certainly appeal, threatening a reversal of  
8 any favorable outcome and causing significant delays in obtaining any relief for Class  
9 Members. *See Fulford v. Logitech, Inc.*, No. C-08-2041-MMC, 2010 U.S. Dist. LEXIS 29042,  
10 at \*8 (N.D. Cal. Mar. 5, 2010) (“[L]iability and damages issues—and the outcome of any  
11 appeals that would likely follow if the Class were successful at trial—present substantial risks  
12 and delays for Class member recovery.”).

13 3. The Risk of Maintaining Class Action Status

14 Another risk Plaintiffs faced going forward is that this Court would decline to certify  
15 this case as a class action. Sallie Mae has strenuously denied that class certification is  
16 appropriate in this case. Beyond the more general issues involved in certification of nationwide  
17 classes, courts have split on class certification in TCPA cases. Compare *Kavu, Inc. v. Omnipak*  
18 *Corp.*, 246 F.R.D. 642 (W.D. Wash. 2007) (granting class certification) with *Kenro, Inc. v. Fax*  
19 *Daily, Inc.*, 962 F. Supp. 1162, 1169 (S.D. Ind. 1997) (denying class certification). If Sallie  
20 Mae persuaded the Court not to certify a class, Plaintiffs and all Class Members would have  
21 been left to try to pursue their small value individual claims on their own.

22 4. The Amount Offered in Settlement

23 The Amended Settlement provides relief for all Settlement Class Members who have  
24 received automated calls. All Settlement Class Members can revoke Sallie Mae’s ability to  
25 make automated calls to them on a cellular telephone if they do not want to receive such calls,  
26 which is the core relief under the Amended Settlement and the focus of the TCPA. Dkt. No.

1 184-1 (Amended Agreement) § III(C)(1). The process to effectuate this relief is simple and  
2 straightforward, involving the submission of a single-page form. The Amended Settlement also  
3 requires Sallie Mae to: (1) pay at least at least \$24.15 million into a Fund, out of which eligible  
4 Settlement Class Members who file a qualified claim will receive a Cash Award or Reduction  
5 Award; (2) pay an additional Dedicated *Cy Pres* Distribution of \$85,000; and (3) contribute  
6 \$45,000 toward additional notice.

7 This Court has observed that at any final fairness hearing, it will be required to compare  
8 the Settlement Fund amount to “estimates of the maximum amount of damages recoverable in a  
9 successful litigation,” and it instructed the Parties to address this issue in any renewed motion  
10 for preliminary approval of the Amended Settlement. Dkt. No. 206 at 23; *see also In re Mego*  
11 *Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming district court’s  
12 determination after fairness hearing that final approval of settlement was appropriate based in  
13 part on comparison of settlement amount with potential recovery). Plaintiffs complied in their  
14 renewed motion, explaining that although the maximum potential recovery for the proposed  
15 Class could be close to \$12 billion, obtaining — and retaining — such a judgment would be, as  
16 a practical and legal matter, impossible. *See* Dkt. No. 207 at 4:9–5:17.

17 The \$24.15 million Settlement Fund is by far the largest TCPA settlement of which  
18 Class Counsel is aware. Based upon the claims data from the original Settlement, and many  
19 other factors (detailed in Plaintiffs’ October 11, 2011 brief in support of preliminary approval  
20 of the Amended Settlement and the accompanying Selbin Declaration (Dkt. Nos. 184 at 13, 185  
21 ¶ 12), each claimant is likely to receive \$20-\$40 each or more. Any Class Member who  
22 received many calls and believes that amount is inadequate can opt out and retain an attorney to  
23 file an individual lawsuit. The amount offered to the Settlement Class Members is reasonable.

24 Further, the Amended Settlement treats all Settlement Class Members fairly. The only  
25 segment of the Settlement Class not eligible for a cash payment consists of those Settlement  
26 Class Members who have become so delinquent on their accounts that they have been written

1 off as a matter of accounting (“Charged-Off Class Members”). These individuals will not  
2 receive a cash payment because, although they share legal claims with other Settlement Class  
3 Members, any damages they might recover would be offset by the debt they owe Sallie Mae  
4 and from which they have walked away. Dkt. No. 185 ¶ 16.

5 Because their damages claims are substantially weaker than the other Settlement Class  
6 Members, it is appropriate to allocate no monetary relief to Charged-Off Class Members (they  
7 are still entitled to the same prospective relief, to wit, stopping the calls). As this Court  
8 acknowledged on preliminary approval, such a principled allocation does not create a conflict  
9 or raise any adequacy issues. *See* Dkt. No. 206 at 21:12–16 (citing *True v. Am. Honda Motor*  
10 *Co.*, 749 F. Supp. 2d 1052, 1057 (C.D. Cal. 2010); *see also In re Mego Fin. Corp. Sec. Litig.*,  
11 213 F.3d at 461–63 (no conflict where “a large portion of the class” was left “without  
12 recovery” under settlement distribution because they “could never get” damages); *Farrell v.*  
13 *OpenTable, Inc.*, No. C 11-1785 SI, 2012 WL 1379661, \*3 (N.D. Cal. January 30, 2012)  
14 (rejecting objection to settlement that provided no monetary relief to certain class members,  
15 stating “the Ninth Circuit has held that it is permissible to award different relief to class  
16 members based upon objective differences in the positions of the class members”) (citing *In re*  
17 *Mego*); *In re PPA Prod. Liab. Litig.*, 227 F.R.D. at 562 (“Placing a lower value on claims that  
18 would have been barred by a defense . . . is hardly evidence of a conflict”). Moreover, Plaintiff  
19 Heather McCue is a Charged-Off Class Member and fully supports the Amended Settlement  
20 despite the fact that she will receive no compensation of any kind. Declaration of Plaintiff  
21 Heather McCue in Support of Motion for Final Approval of Amended Settlement ¶¶ 12-15.

22 5. The Extent of Discovery Completed and the Stage of the Proceedings

23 Final approval is favored because substantial investigation and discovery were  
24 completed prior to the Amended Settlement. Courts consider the extent of discovery completed  
25 and the stage of the proceedings in determining whether a class action settlement is fair,  
26 adequate and reasonable. Courts regularly approve prompt settlements, especially those

1 achieved after thorough pre-filing negotiations. *See, e.g., Pelletz*, 255 F.R.D. at 539; *see also*  
2 *In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (finding that class  
3 counsel’s significant investigation and research supported approval of settlement, even absent  
4 extensive formal discovery); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir.  
5 1998) (“[F]ormal discovery is not a necessary ticket to the bargaining table where the parties  
6 have sufficient information to make an informed decision about settlement.”).

7 The Amended Settlement is the result of a thorough investigation, formal and informal  
8 discovery, and an evaluation of Plaintiffs’ legal claims. This factor favors approval.

9 6. The Experience and Views of Counsel

10 Where class counsel is qualified and well informed, their opinion that a settlement is  
11 fair, reasonable, and adequate is entitled to significant weight. *See Pelletz*, 255 F.R.D. at 543.  
12 Here, Class Counsel advocates the proposed Amended Settlement as fair, reasonable, adequate,  
13 and in the best interest of the Settlement Class as a whole. Indeed, Class Counsel believe this  
14 proposed Amended Settlement to be an excellent result. *See Selbin Decl.* ¶ 71; *see also Terrell*  
15 *Final Approval Decl.* ¶ 18. And, while it is not a factor courts expressly consider, the fact that  
16 Judge Infante, a well-respected retired federal judge, also believes that the Amended Settlement  
17 is an excellent result (Dkt. No. 186 ¶ 8) further militates in favor of its approval.

18 7. The Presence of a Governmental Participant

19 No governmental entity is a party to this action. However, in compliance with the  
20 notice provision of CAFA 28 U.S.C. § 1715, notice of the Amended Settlement has been  
21 provided to the United States Attorney General, and the Attorneys General of each of the 50  
22 states in which Settlement Class Members may reside. *See Submission of Defendant Sallie*  
23 *Mae, Inc. Regarding Notice Pursuant to the Class Action Fairness Act of 2005* (Dkt. No. 217).

24 “Although CAFA does not create an affirmative duty for either state or federal officials  
25 to take any action in response to class action settlement, CAFA presumes that, once put on  
26 notice, either state or federal officials will raise any concerns that they may have during the

1 normal course of the class action settlement procedures.” *Garner v. State Farm Auto Ins. Co.*,  
2 No. CV 08 1365 CW (EMC), 2010 WL 1687832, \*14 (N.D. Cal. April 22, 2010). Not one  
3 governmental entity has objected.

4 8. The Reaction of Settlement Class Members

5 A positive response to a settlement by the class—as evidenced by a small percentage of  
6 opt-outs and objections—further supports final approval. *See Pelletz*, 255 F.R.D. at 543. Here,  
7 the deadline to opt out or object to the Amended Settlement is July 3, 2012. Plaintiffs thus will  
8 fully analyze this factor and respond to any objections to the Amended Settlement in their reply  
9 papers, which are due on August 1, 2012.

10 The response to the Amended Settlement thus far strongly indicates that the reaction to  
11 the Amended Settlement will be resoundingly positive. As of May 6, 2012, GCG had received  
12 a total of 74 exclusion requests and zero objections to the Amended Settlement. *See Keough*  
13 Decl. ¶ 21. GCG also had received a total of 31,621 Claim Forms and 10,525 Revocation  
14 Request Forms in connection with the Amended Settlement. *Id.* ¶ 20. Moreover, 106,449  
15 people filed Claim Forms and 76,702 people filed Revocation Request Forms in connection  
16 with the original Settlement, all of which are still valid and apply to the Amended Settlement.<sup>3</sup>  
17 The substantial number of people claiming settlement relief weighs in favor of final approval.

18 **III. CONCLUSION**

19 The Amended Settlement is fair, adequate and reasonable. Settlement Class Members’  
20 ability to completely halt automated calls to their cellular phones, in addition to payment of  
21 \$24.15 million to the Class, is an outstanding result in light of the recoveries potentially  
22 available under the law and the risks of continued litigation. Plaintiffs respectfully request that  
23 the Court grant final approval to the Amended Settlement.

24  
25  
26 <sup>3</sup> Only 23 people filed objections in connection with the original Settlement. *See Keough Decl.*  
¶ 21.



1 DATED this 17th day of May, 2012.

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CERTIFICATE OF SERVICE

I, Beth E. Terrell, hereby certify that on May 17, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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